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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROBERT ELIASON, an individual and in his
official capacity as Constable of North Las
Vegas Township,

Plaintiff,

v.

CLARK COUNTY, a political subdivision of
the State of Nevada; STATE OF NEVADA ex
rel NEVADA COMMISSION ON PEACE
OFFICER STANDARDS & TRAINING, a
regulatory agency of the State of Nevada,

Defendants.

Case No.: 2:17-cv-03017-JAD-CWH

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited

1 information or items that are entitled to confidential treatment under the applicable legal
2 principles. As set forth below, this Protective Order does not entitle the Parties to file
3 confidential information under seal; LR IA 10-5 sets forth the procedures that must be followed
4 when a party seeks permission from the Court to file material under seal.

5 Confidential information protected by this Protective Order is “declared by law to be
6 confidential” for purposes of NRS ch. 239 and shall not be disclosed pursuant to any public
7 records request or Freedom of Information Act request or any other such statute, law, or
8 regulation.

9 **2. DEFINITIONS**

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 2.2 Designating Party: a Party or Non-Party that designates information or items that it
13 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

14 2.3 Disclosure or Discovery Material: all items or information, regardless of the
15 medium or manner in which it is generated, stored, or maintained (including, among other
16 things, testimony, transcripts, and tangible things), that are produced or generated in
17 disclosures or responses to discovery in this matter.

18 2.4 Expert: a person with specialized knowledge or experience in a matter pertinent to
19 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness
20 or as a consultant in this action; (2) is not a current employee of a Party; and (3) at the time of
21 retention, is not anticipated to become an employee of a Party or of a Party’s competitor. This
22 definition includes a professional jury or trial consultant retained in connection with this
23 litigation.

24 2.5 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY Information or
25 Items: extremely sensitive employment, educational, and health information or Items,
26 disclosure of which to another Party or Non-Party requires a high level of protection due to
27 significant privacy interests of the Designating Party. HIGHLY CONFIDENTIAL –
28

1 ATTORNEYS' EYES ONLY Information or Items include any documents or information
2 prohibited from disclosure by statute, including but not limited to FERPA and HIPAA in the
3 possession, custody, or control of any Party or Non-Party.

4 HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY Information or Items may be
5 disclosed to two representatives of a Receiving Party designated in advance, provided that
6 such Receiving Party representative execute an Acknowledgement and Agreement to Be
7 Bound in substantially the form of Exhibit A to this Order.

8 2.6 Non-Party: any natural person, partnership, corporation, association, or other legal
9 entity not named as a Party to this action.

10 2.7 Outside Counsel of Record: attorneys who are not employees of a party to this
11 action but are retained to represent or advise a party to this action and have appeared in this
12 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
13 that party.

14 2.8 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.9 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in this action.

18 2.10 Professional Vendors: persons or entities that provide litigation support services
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
20 organizing, storing, or retrieving data in any form or medium) and their employees and
21 subcontractors.

22 2.11 Protected Material: any Disclosure or Discovery Material that is designated as
23 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

24 2.2 Receiving Party: a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also any information copied or extracted from Protected Material; all copies, excerpts, summaries, or compilations of Protected Material; and any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Nothing in this Order shall restrict in any way a Producing Party's use or disclosure of its own Protected Material.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (a) dismissal of all claims and defenses in this action, with or without prejudice; and (b) final judgment herein after the completion and exhaustion of all appeals, rehearing's, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written communications
2 that qualify – so that other portions of the material, documents, items, or communications for
3 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

4 5.2 Manner and Timing of Designations. Designation of Protect Material shall be
5 performed as follows:

6 (a) For information in documentary form (e.g., paper or electronic documents,
7 but excluding transcripts of depositions or other pretrial or trial proceedings), the Producing
8 Party shall affix the legend “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to
9 each page that contains protected material. If only a portion or portions of the material on a
10 page qualifies for protection, the Producing Party also must clearly identify the protected
11 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
12 portion, the level of protection being asserted. A Party or Non-Party that makes original
13 documents or materials available for inspection need not designate them for protection until
14 after the inspecting Party has indicated which material it would like copied and produced.
15 During the inspection and before the designation, all of the material made available for
16 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
17 After the inspecting Party has identified the documents it wants copied and produced, the
18 Producing Party must determine which documents, or portions thereof, qualify for protection
19 under this Order. Then, before producing the specified documents, the Producing Party must
20 affix the appropriate legend “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
21 to each page that contains Protected Material. If only a portion or portions of the material on a
22 page qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
24 portion, the level of protection being asserted.

25 (b) For testimony given in deposition or in other pretrial or trial proceedings,
26 the Designating Party shall identify on the record, before the close of the deposition, hearing,
27 or other proceeding, all protected testimony and specify the level of protection being asserted.

1 When it is impractical to identify separately each portion of testimony that is entitled to
2 protection and it appears that substantial portions of the testimony may qualify for protection,
3 the Designating Party may invoke on the record (before the deposition, hearing, or other
4 proceeding is concluded) a right to have up to 30 days to identify the specific portions of the
5 testimony as to which protection is sought and to specify the level of protection being asserted.
6 Only those portions of the testimony that are appropriately designated for protection within the
7 30 days shall be covered by the provisions of this Protective Order. Alternatively, a
8 Designating Party may specify, at the deposition or up to 30 days afterwards if that period is
9 properly invoked, that the entire transcript shall be treated as r “HIGHLY CONFIDENTIAL—
10 ATTORNEYS’ EYES ONLY.” Counsel for the Producing Party shall have the right to exclude
11 from oral depositions other than the deponent, the deponent’s counsel, the reporter and the
12 videographer (if any), any person who is not authorized by this Protective Order to receive or
13 access Protected Material based on the designation of such Protected Material. Such right of
14 exclusion shall be applicable only during periods of examination or testimony regarding such
15 Protected Material. Transcripts containing Protected Material shall have an obvious legend on
16 the title page that the transcript contains Protected Material, and the title page shall be followed
17 by a list of all pages (including line numbers as appropriate) that have been designated as
18 Protected Material and the level of protection being asserted by the Designating Party. The
19 Designating Party shall inform the court reporter of these requirements. Any transcript that is
20 prepared before the expiration of a 30-day period for designation shall be treated during that
21 period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript
23 shall be treated only as actually designated.

24 (c) For information produced in some form other than documentary and for any
25 other tangible items, the Producing Party shall affix in a prominent place on the exterior of the
26 container or containers in which the information or item is stored the legend “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
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1 information or item warrant protection, the Producing Party, to the extent practicable, shall
2 identify the protected portion(s) and specify the level of protection being asserted.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating
5 Party's right to secure protection under this Order for such material. Upon timely correction of
6 a designation, the Receiving Party must make reasonable efforts to assure that the material is
7 treated in accordance with the provisions of this Order. Pursuant to Rule 502(d) of the Federal
8 Rules of Evidence, an inadvertent failure to designate qualified information or items as
9 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" does not waive the Designating
10 Party's right to secure protection under this Order for such material. Additionally, inadvertent
11 production of information or materials to which a Party or Non-Party may make a claim of
12 privilege or of protection from discovery shall not operate as a waiver of that privilege or
13 protection and shall not operate as any subject matter waiver of that privilege or protection.

14 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
22 by providing written notice of each designation it is challenging and describing the basis for
23 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
24 must recite that the challenge to confidentiality is being made in accordance with this specific
25 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good
26 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms
27 of communication are not sufficient) within 14 days of the date of service of notice. In
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1 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
2 designation was not proper and must give the Designating Party an opportunity to review the
3 designated material, to reconsider the circumstances, and, if no change in designation is
4 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
5 the next stage of the challenge process only if it has engaged in this meet and confer process
6 first or establishes that the Designating Party is unwilling to participate in the meet and confer
7 process in a timely manner.

8 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
9 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
10 LR 7-2 (and in compliance with LR IA 10-5, if applicable) within 21 days of the initial notice
11 of challenge or within 14 days of the parties agreeing that the meet and confer process will not
12 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
13 competent declaration affirming that the movant has complied with the meet and confer
14 requirements imposed in the preceding paragraph. Failure by the Designating Party to make
15 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall
16 automatically waive the confidentiality designation for each challenged designation. In
17 addition, the Challenging Party may file a motion challenging a confidentiality designation at
18 any time if there is good cause for doing so, including a challenge to the designation of a
19 deposition transcript or any portions thereof. Any motion brought pursuant to this provision
20 must be accompanied by a competent declaration affirming that the movant has complied with
21 the meet and confer requirements imposed by the preceding paragraph. The burden of
22 persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous
23 challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
24 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless
25 the Designating Party has waived the confidentiality designation by failing to file a motion to
26 retain confidentiality as described above, all parties shall continue to afford the material in
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question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Nothing in this Order shall bar or otherwise restrict any attorney from rendering advice to his or her client with respect to this litigation and, in the course thereof, referring to or relying upon his or her examination of Protected Material produced by another party or a third-party; provided, however, that in rendering such advice and in otherwise communicating with his client, the attorney shall not make specific disclosure of any item of the Protected Material except for the designated representatives of the Receiving Party pursuant to Section 2.6 who have signed the Acknowledgement and Agreement to Be Bound in substantially the form of Exhibit A to this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of Section 11 below.

Counsel for a Receiving Party which provides Protected Material to a permitted person below shall maintain a copy of the Acknowledgement and Agreement to Be Bound in substantially the form of Exhibit A to this Order.

7.2 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to the following:

(a) The Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts of the Receiving Party to whom disclosure is reasonably necessary for this litigation, who have executed the Acknowledgement to Be Bound in substantially the form of Exhibit A to this Order.;

(c) The Court and its personnel;

(d) Court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

(e) The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information, or any deposition witness who is an employee of the Producing Party (or the Designating Party, if different); and

(f) Any mediator who is assigned to hear this matter and his or her staff.

(g) The designated representatives of the Receiving Party pursuant to Section 2.6 who have signed the Acknowledgement and Agreement to Be Bound in substantially the form of Exhibit A to this Order

7.3 Duty to Maintain Protected Material Securely. A Receiving Party shall store and maintain Protected Material at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY that Party must:

(a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

1 The purpose of imposing these duties is to alert the interested parties to the existence of
2 this Protective Order and to afford the Designating Party in this case an opportunity to try to
3 protect its confidentiality interests in the court from which the subpoena or order issued.

4 If the Designating Party timely seeks a protective order, the party served with the subpoena
5 or court order shall not produce any information designated in this action as HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY before a determination by the court from
7 which the subpoena or order issued, unless the party has obtained the Designating Party’s
8 permission. The Designating Party shall bear the burden and expense of seeking protection in
9 that court of its confidential material – and nothing in these provisions should be construed as
10 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
11 another court.

12 **9. NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
13 **THIS LITIGATION**

14 The terms of this Order apply to information produced by a Non-Party in this action and
15 designated as HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES ONLY. Such information
16 produced by Non-Parties in connection with this litigation is protected by the remedies and
17 relief provided by this Order. Nothing in these provisions should be construed as prohibiting a
18 Non-Party from seeking additional protections.

19 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Protective Order, the
22 Receiving Party must immediately (a) notify in writing the Designating Party of the
23 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
24 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
25 made of all the terms of this Order, and (d) request such person or persons to execute Exhibit
26 A. The Designated Party reserves all rights against the Receiving Party for its violations. In
27 the event any Party or Non-Party violates or threatens to violate any term of this Order, any
28 Party may seek immediate injunctive relief against any such Party or Non-Party.

11. FINAL DISPOSITION

Unless otherwise ordered by the Court or agreed to in writing by the Producing Party, within 60 days after the final disposition of this action, as defined in Section 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this Section, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Outside Counsel of Record are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Outside Counsel of Record need not purge its document management system or backup tapes to eliminate Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file

in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with LR IA 10-5.

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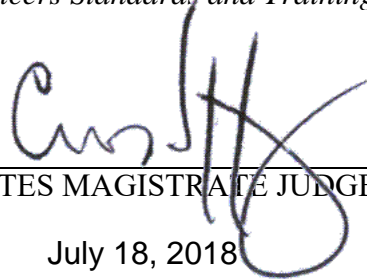
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IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE

DATED: July 18, 2018

EXHIBIT A

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the Protective
6 Order that was issued by the United States District Court for the District of Nevada on
7 _____ [date] in the case of _____, Case No.
8 _____. I agree to comply with and to be bound by all the terms of this
9 Protective Order, and I understand and acknowledge that failure to so comply could expose me to
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
11 any manner any information or item that is subject to this Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the District of Nevada for the purpose of enforcing the terms of this Protective Order, even if such
15 enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my Nevada agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Protective Order.
20

21 Date: _____

22 City and State where sworn and signed: _____
23

24 Printed name: _____

25 [printed name]
26

27 Signature: _____

28 [signature]